

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Workers of America, Local
9415, Kathleen Kinchius, President,

Complainant,

vs.

Pacific Bell, (U 1001 C),

Defendant.

Case 92-04-007
(Filed April 3, 1992)

ADMINISTRATIVE LAW JUDGE'S RULING PROPOSING DISMISSAL

Introduction

This ruling proposes to dismiss the above complaint on account of staleness. The parties are invited to comment on the proposal.

Background

As the caption shows, this is a 10-year old case. The case concerned monitoring by the defendant of calls between its customers, on the one hand, and its operators or service representatives, on the other. In a series of decisions dating back to the 1960s, this Commission had developed detailed rules that governed how monitoring was supposed to be conducted. Before hearings were held, there were two prehearing conferences, an amended complaint, a motion to dismiss the amended complaint that was granted in part, and finally a letter stipulation whereby the complainant withdrew virtually all of the specific monitoring violations it had alleged, and the parties agreed to submit four more

general questions for decision. After the stipulation, there were two days of hearings and then briefs.

Discussion

Much of the hearing time in this case was devoted to the adequacy of (1) the training defendant gave its operators and service representatives on the Commission's monitoring rules, and (2) the forms defendant used in connection with monitoring. In view of the time that has elapsed since the hearing, there is a serious issue whether the record on these issues is now so stale that a decision concerning them would still be justified.

Another issue at the hearings was defendant's proposed use of a recorded announcement that would inform customers that the subject call might be monitored for quality assurance purposes. It is common knowledge that the use of such announcements has become ubiquitous since the hearing in this case was held, while the use of a periodic beep tone to warn of monitoring has all but disappeared.

Finally, the context in the telecommunications market for service and sales calls has changed dramatically since the complaint was filed, and so has the law applicable to consumer protection and privacy issues.

All of these factors suggest that whatever controversy persists as to the defendant's monitoring technology and practices may not be apparent from this record. Under these circumstances, the most appropriate course of action would appear to be a dismissal of this case, followed by the commencement of a new proceeding, if necessary.

Accordingly, the complainant and defendant are invited to comment on the proposal to dismiss the current complaint. If either party disagrees with this proposal, that party may file comments addressing the need to continue. Such

comments should specify the issue(s) requiring resolution, indicate in general terms why the record on the issue(s) is not stale, and state why a decision on the issue(s) is feasible if it is determined that the record on other major issues is too stale. Comments on these issues will be due on October 2, 2002, and reply comments on October 16, 2002.

In accordance with the discussion above, **IT IS RULED** that:

1. The complainant and defendant may file and serve comments that address the need to continue with this case. Any party believing that the record is not stale on any of the principal issues shall specify that issue, state in general terms why the record on that issue is not stale, and explain why a decision on that issue is feasible even if it is determined that the record on other issues is too stale to justify issuing a decision as to those other issues.

2. Opening comments on the issues set forth above will be due on October 2, 2002, and reply comments on October 16, 2002.

Dated September 17, 2002, at San Francisco, California.

/s/ A. KIRK MCKENZIE

A. Kirk McKenzie
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Proposing Dismissal on all parties of record in this proceeding or their attorneys of record.

Dated September 17, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.